

BOARD OF APPEALS CASE NO. 4960

BEFORE THE

APPLICANTS: Adrian & Adrienne Smith

ZONING HEARING EXAMINER

REQUEST: Variance to disturb the
Natural Resource District in the B3 District;
3633 Conowingo Road, Street

OF HARFORD COUNTY

Hearing Advertised

Aegis: 8/11/99 & 8/18/99

Record: 8/13/99 & 8/20/99

HEARING DATE: October 6, 1999

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Adrian and Adrienne Smith, appeared before the Hearing Examiner requesting a variance to Sections 267-41(D)(5)(e) and 267-41(D)(6) of the Harford County Code, to disturb the Natural Resource District in a B3, General Business District.

The subject property is located at 3622 Conowingo Road in the Fifth Election District. The parcel is identified as Parcel No. 39, in Grid 1-C, on Tax Map 27. The parcel contains 6.3 acres, more or less, all of which is zoned B3.

Mr. Adrian Smith, referring to Applicant's Exhibit No. 13, described the property lines, existing vegetation, road access, topography and surrounding uses and said the property contained 6.3 acres. He said there is a large salvage yard to the south of the subject property and the Crouse Construction Company to the north. Adjoining the subject property along U.S. Route 1 are two residential properties.

Mr. Smith said that his request is to store up to 4 tractor trailers on the property and that he proposes to construct a 3,750 square foot building. He went on to testify that he has two employees who currently drive for him and that there will not be office employees on the site. Mr. Smith said that he believes the tractor trailers will be able to maneuver on the property and that the proposed use will not create an unsafe traffic condition. Mr. Smith said that when he first became aware of the property, he contacted the Department of Planning and Zoning and was advised that the storage of trucks was a permitted use in the B3 zone.

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He went on to testify that at the time of purchase of the property, the property had been used as a dumping ground for a variety of debris and junk. Mr. Smith said that he has removed a substantial amount of that debris and junk and plans to further clean up the property upon development of the site. Mr. Smith further testified he did not believe that approval of the variance would be substantially detriment to adjacent properties and that additional lighting which will be necessary will be directed away from surrounding residential properties. He noted that there is a stand of trees between his property and one of the residences to the south which will provide some screening. He also testified that he will submit a landscaping plan and comply with all screening requirements that are imposed by the Department of Planning and Zoning.

Mr. Smith went on to testify that he attempted several configurations for the proposed development on the property and met with the Department of Planning and Zoning before arriving at the proposed configuration. He said there is no way to locate the proposed building and driveway area outside of the Natural Resources District. Mr. Smith said he could not make a reasonable use of the property since the property was purchased specifically for storage of the vehicles. He said he believes that the requested variance is the minimum necessary for the plan he has proposed.

Mr. Smith explained that the property is unique because of its size and shape, as well as the fact that a large portion of the property is impacted by the Natural Resource District. He believes that he will suffer practical difficulty if the request is denied as he will not have any reasonable use for the property.

Mr. Douglas Kopeck, of Campbell & Nolan Associates, Inc., was accepted as an expert landscape architect and environmental planner. Using Applicants' Exhibit Nos. 14, 15 and 16, Mr. Kopeck described the existing environmental features on the site, the proposed disturbance of the site, and mitigation measures which will be taken by the Applicants. He noted that, currently, 88% of the subject property is impacted by Natural Resource District and buffer. He testified that three-quarters of an acre of usable land on the 6.3 acre parcel is available to the Applicant.

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Mr. Kopeck testified that the subject property has contained commercial uses for many years, including an electrical business and commercial greenhouse, and that there are still concrete pads within the Natural Resource District from the prior greenhouse use. It was Mr. Kopeck's opinion that the functional quality of the Natural Resource District in question is poor. He emphasized that his opinion focuses on the area which the Applicant proposes to disturb and not the balance of the Natural Resource District which will remain after development. He said there is very limited indigenous vegetation in the area to be disturbed and there are no endangered or threatened species on the site. He testified the area to be disturbed does not perform a significant function for groundwater recharge, flood water retention or conveyance, water quality improvement or plant or wildlife habitat. He went on to testify that under the proposed mitigation plan, all of those functions of the wetland would be improved on the remaining area and, additionally, that the Applicants will be required to include a storm water management plan for the site. Mr. Kopeck noted that neither of the surrounding commercial uses currently have a storm water management plan and he pointed out that the construction of the storm water management area within the Natural Resource District is an acceptable use of land in a Natural Resource District.

It was Mr. Kopeck's opinion that the proposed development could not be reconfigured in order to avoid the wetlands and he did not believe that the proposed use would adversely affect the Natural Resource District. He said that denial of the requested variance would make it difficult to develop the subject property. Mr. Kopeck explained that the subject property is unique in terms of its size and shape. Furthermore, he said that the existence of a Natural Resource District and buffer over 88% of the B3 commercial property renders the property unique.

It was also Mr. Kopeck's opinion that the Applicant would suffer practical difficulty if the requested variance is denied as the Applicants would not have any reasonable use for the property. He believed that the requested variance was the minimum necessary for the Applicant to eliminate the hardship which would result from strict enforcement of the Code and did not think that the proposed variance would be detrimental to adjacent properties.

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Mr. Kopeck testified that he had reviewed the "Limitations, Guides and Standards" contained in Section 267-9(l) of the Zoning Code, and that none of the "Limitations, Guides and Standards" indicated that the requested variance should be denied.

Mr. Milton Davenport appeared on behalf of the Department of Planning and Zoning and testified that the Staff has reviewed the Applicant's request and agreed that prior disturbance has occurred on the portion of the wetland which the Applicant proposes to develop. Mr. Davenport said that the Department recommended approval to disturb the Natural Resource District for no more than 20,000 square feet, provided that the remaining area be restored as qualified wetland and buffer area, and that the Applicant submit a restoration plan for approval prior to the issuance of a permit.

Mr. and Mrs. Charles Johns, who own one of the residential properties located on U.S. Route 1, which adjoins the subject property, appeared and testified they are concern about storm water management and modifications which have already occurred on the property since purchased by the Applicants. The Johns also indicated that there is a school bus stop in front of the subject property and were concerned about the impact of the Applicants' vehicles on the school bus stop. Mr. and Mrs. Johns also pointed out that the Applicants do not reside on the property.

CONCLUSION:

The Applicants are requesting a variance to Sections 267-41(D)(5)(e) and 267-41(D)(6) of the Harford County Code, to disturb a Natural Resource District in the B3 District.

Section 267-41(D)(5)(e) provides:

"Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands."

Section 267-41(D)(6) allows the Board to grant variances to the Natural Resource District and provides:

"Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources."

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Advisory comments were requested from the Soil Conservation Service and the Department of Natural Resources. No comments were received from the Department of Natural Resources. The Soil Conservation Service did comment and recommended that a sediment and erosion control plan be approved by the District before a grading permit is issued. The Soil Conservation Service also recommended stabilization of the environmentally sensitive areas immediately after grading is complete within the specified areas.

The Zoning Administrator, through the Staff Report, recommended conditional approval of the request. The testimony presented by the Applicant indicates that granting of the variance will not adversely affect the use and enjoyment of the Natural Resource District or neighboring properties. The Applicants have already removed debris from the site and are proposing a storm water management and wetland mitigation plan. The Applicants' environmental expert, Douglas Kopeck, testified that the proposed disturbance would actually enhance the remaining Natural Resource District and improve the quality of the environmental features on the property.

The Protestants who testified at the hearing offered no evidence which would demonstrate that the Applicants had failed to meet the requirements of Section 267-41(D)(6). Therefore, it is the recommendation of the Hearing Examiner that the Applicants' request to disturb no more than 20,000 square feet of the Natural Resource District be approved, subject to the following conditions:

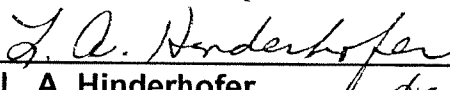
1. That the Applicants shall prepare a detailed site plan to be reviewed through the Development Advisory Committee (DAC).
2. That the Applicants shall prepare a detailed mitigation plan and reforestation plan for the site area to be reviewed and approved by the Department of Planning and Zoning, the Maryland Department of the Environment, and the Army Corps of Engineers. A bond or other acceptable financial security shall be submitted to Harford County in an amount adequate to ensure survival of the restoration plantings.

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Should the Army Corps of Engineers require a financial guarantee as a condition of their enforcement action and issuance of a permit, documentation of the submittal of a financial guarantee to the Corps of Engineers shall fulfill this condition.

3. That the Applicants shall obtain all necessary permits and inspections for construction of the building and parking area.
4. That the Applicants shall comply with the Harford County Health Department requirements in removing the existing mobile home and septic system.

Date NOVEMBER 24, 1999



L. A. Hinderhofer
Zoning Hearing Examiner